

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 297 of 1997

in

COMPANY APPLICATION No 105 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

SHREE DIGVIJAY CEMENT CO.LTD.

Versus

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Appearance:

Mr. K.S. Nanavati, Ld. counsel for SINGHI & BUCH ASSO.
for Petitioner

MR. B.T. RAO, Ld. Govt. Standing Counsel for Respondent

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 20/10/97

ORAL JUDGEMENT

Present Orders shall govern the disposal of the
aforesaid Company Petition which is under Sec. 391 to

394 of the Companies Act, 1956. The Petitioner Company is the Transferor Company. The Transferee Company is not before me.

In the aforesaid Company Petition No. 297 of 1997, the Petitioner Company happens to be Shree Digvijay Cement Company Limited, an existing company under the provisions of the Companies Act, 1956, having its registered office at Digvijaygram, Gujarat.

The Petitioner Company was incorporated on 6th. November, 1994. The authorised, issued, subscribed and paid-up capital of the Petitioner Company is as under:

Authorised:

2,50,00,000	Equity Shares of	Rs.
Rs.10/- each.	:	25,00,00,000
2,00,000	Cumulative Pre- ference Shares	
	of Rs.100/- each	: 2,00,00,000

		27,00,00,000
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Issues:

73,34,865	Equity shares of	
	Rs.10/- each.	: 7,33,48,650
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Subscribed & Paid-up

Rs.

73,31,830	Equity shares of	
	Rs.10/- each, fully	
	paid.	: 7,33,18,300
Less: 1120	Equity Shares of	
	Rs.10/- each forfeited:	11,200

		7,33,07,100
Add: Forfeited shares		
(amount originally		
paid-up on Equity		
Shares)		6,500

Add: Application and Allot-
ment money in 21 Equity
Coupons. 525

7,33,14,125
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The main objects for which the Petitioner Company was incorporated are set out in the Memorandum and Articles of Association (Annexure "A" to the Petition), which include the activity of carrying on the manufacture of cement in India or elsewhere.

The financial position of the Transferor Company had been shown in the Balance Sheet of the Company for the year ended 31-3-1996, a copy whereof is annexed and marked Annexure "B" to the Petition, as also the financial position of the Company as on 31-7-1997, as mentioned in paragraph 5 of the petition.

Gujarat Composite Limited, the Transferee Company (not before me) is the company situated at Calcutta within the State of West Bengal. The Transferee Company was original incorporated in the name of Bhawani Petrochem Limited, and the name of the company has been changed to Gujarat Composite Limited with effect from 11th. February 1994.

The main objects for which the Transferee Company was established are set out in its Memorandum and Articles of Association, a copy whereof is annexed to the petition and is marked as Annexure "C". The main objects of the Transferee Company are to purchase and take over as going concern, business and property of fibre products division (rilaxon), Ahmedabad Cement Mill Limited, Coir and Felt Division and Silk division, with all immovable and movable properties and other assets, including the goodwill of the said undertaking of Shree Digvijay Cement Company Limited and discharge all or any of the liabilities thereof.

The authorised capital of the Transferee Company is Rs.2,00,00,000 (Rupees two crores only) divided into 20,00,000 Equity shares of Rs.10/- (Rupees ten only) each. The issued, subscribed and paid-up capital of the Transferee Company is Rs.24,90,000/- (Rupees twenty four lacs ninety thousand only). Annexure "D" to the Petition is a copy of the Balance Sheet of the Transferee Company for the year ended 31-3-1996.

The Petitioner Company asked for the sanction of

the Scheme of Arrangement under which the " Transfer Group" as mentioned in the Scheme would be transferred to Gujarat Composite Limited, the Transferee Company. The said Transferee Company has got the main objects which could be said to be in line with the objects of the Transferor Company. The circumstances which necessitated the Scheme of Arrangement inter alia include the following.

- (1) The the Petitioner Company has become a conglomerate with multifarious manufacturing activities. The Scheme would help the Transferor and Transferee Companies to act independently with greater focus and concentrated attention to achieve efficiency which would lead to substantial improvement in the working results fostering better profitability.
- (2) That the Scheme would help the Transferor and Transferee Companies to attract superior managerial talents to manage their respective affairs which would help the Transferor and Transferee Companies to grow faster.
- (3) The Scheme will be advantageous to both the Companies, their respective shareholders and all others concerned. The Scheme would be beneficial to the interest of the Transferor and the Transferee Companies and that their shareholders and creditors would, inter alia, have advantage of the Divisions of Transferor and Transferee Companies being able to expand and diversify their activities resulting in better financial, technical, production and marketing control and management, better planning and monitoring of operations, generation of more income and surpluses, expeditious and timely payment of loans and advances of financial institutions and banks and other large number of small creditors and depositors and creation of more employment opportunities and increase in production and further growth.

The salient features of the proposed Scheme of arrangement would go to show that on and with effect from the transfer date, the "Transfer Group" of the Transferor Company shall without any further act or deed be transferred to and vest in the Transferee Company pursuant to the provisions of Section 394 of the Companies Act, 1956, subject to all the charges and encumbrances. Any suit, appeal or proceedings of any

nature whatsoever by or against the Transferor Company regarding the "Transfer Group" which would be pending shall not abate or be discontinued or in any way be prejudicially affected by reason of the Scheme of arrangement. The Transferee Company will on such transfer take over all the employees of the "Transfer Group" of the Transferor Company in consideration of the transfer and vesting of the "Transfer Group". The Transferee Company shall without any further act or deed issue and allot to every member of the Petitioner Company holding shares in the Petitioner Company on a date to be fixed by the Board of Directors of the Transferee Company in the ratio of 1 (one) Equity share of the Transferee Company of Rs.10/- each fully paid up for 3 (three) Equity Shares of the Petitioner Company of Rs.10/- each held by such members.

The Petitioner Company vide order dated 1-4-97 was directed to call the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Company. As per the reports submitted by Mr. Rajsingh Nirwan, the Chairman appointed for the meetings, the Scheme of Arrangement was unanimously approved by the Unsecured creditors of the Petitioner Company, majority in number representing 3/4th. in value by the Equity Shareholders of the Petitioner Company, and unanimously by the secured creditors of the Petitioner Company.

The Scheme of Arrangement on its perusal shows that the same is not derogatory to the interest of either the share holders, the creditors - secured and unsecured - of the Petitioner company in question. Nobody objected to the sanction of the Scheme of Arrangement. The Scheme as a whole upon a careful scrutiny appears to be in the interest of everybody concerned.

The Regional Director, Western Region, Ministry of Finance, Department of Company Affairs, has said in their communication dated 16th. October 1997, that it has been decided not to make any representation in this respect on the examination of the Scheme of Arrangement, and that it has been decided that the matter maybe left to the Court to be decided on its merits. Any how, the communication would bring to the notice of the Court certain circumstances which relate to the authorised capital to be increased by the Transferee Company, as on the scheme being sanctioned, the Transferee Company would be required to allot shares to the shareholders of the Petitioner Company. Mr. Nanavati, the learned Counsel, has stated that the Transferee company in its extra

ordinary General Meeting held on 15th September 1997 has passed a resolution for increasing the authorised capital from Rs.2 crores to Rs.2.75 crores. Therefore, the abovesaid communication should not come in the way of the Petitioner Company.

Incidentally all of these, as a Company Court, I have been satisfied with the Scheme proposed as a whole is just, fair and reasonable from the point of view of all concerned.

Therefore, in my opinion, the present petition requires to be granted. The petition is hereby granted, by saying that the proposed Scheme is sanctioned by me.

Mr. Nanavati, the learned counsel, has stated that the High Court of West Bengal at Calcutta has sanctioned the Scheme in view of the proceedings initiated by the Transferee Company.

The copy of the communication dated 16th. October 1997 being presented by Ld. Addl. Standing Counsel Mr. Rao and the communication coming from M/s. Khaitan & Co. Advocates & Solicitors dated September 23, 1997 be kept on record.

The fees for the Addl. Standing Counsel for the Central Government is quantified at Rs.5,500-00.

The Company Petition, therefore, stands allowed with no order as to costs.

/vgn.